

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

S.A.O. No.12 of 1991(O&M)
Date of Decision : 01.11.2007

Chander Bhan (deceased) through his L.Rs.

.....Appellant

Versus

Satpal & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Nilesh Bhardwaj, Advocate
for the appellant.

VINOD K. SHARMA, J. (ORAL)

This second appeal has been filed against the order dated 5.1.1991 passed by the learned Addl. District Judge, Hissar vide which the plaint filed by the plaintiff appellant was ordered to be returned for presentation in the Court of competent jurisdiction.

The plaintiff filed a suit seeking possession of suit land measuring 44K-16M on the plea that the plaintiff and defendant No.5 were the owner of the suit land. It was claimed that father of defendant Nos.1 to 4 was the tenant in possession of the suit land for a period of one year and that he had left the possession by entering into an agreement dated 19.9.1980 in favour of the plaintiff and it was claimed that the possession was also delivered to the plaintiff and proforma defendant. It was claimed that defendants No. 1 to 4 had collusively get the entries in their name regarding the suit land and also got the entries of their possession made in the khasra girdawaris. It was claimed that the plaintiff was never given any notice by the Kanungo and therefore change in the entry does not bind the right of the plaintiff. It was defendant Nos. 1 to 4 ,who were in illegal occupation of the

suit land and were claiming their possession on the basis of illegal entries in the revenue record.

The suit was contested by defendants No. 1 to 4 on the plea that plaintiff has no locus standi to sue. It was claimed that Court had no jurisdiction to try the suit, other objections were also taken.

The averments made on merit were denied and controverted. One of the issues framed by the learned trial Court was “whether the Civil Court has no jurisdiction to try the present suit ?” The learned trial Court decided issue No.2 in favour of the plaintiff by observing that as the defendants have failed to produce any case law on the point, therefore, it was to be held that the Civil Court has jurisdiction to entertain and try this suit. However, in view of the finding recorded on other issues, with which this Court has no concern for the moment, the suit of the plaintiff was ordered to be dismissed.

The plaintiff appellant filed an appeal against the judgment and decree of the learned trial Court wherein the defendant respondents challenged the finding on issue No.2 on the plea that the defendants, were in possession of the suit land as tenant. The Civil Court had no jurisdiction to entertain the present suit in view of the provisions contained in Section 77 of the Punjab Tenancy Act. In support of this contention the reliance was placed on the judgment of this Court in the case of ***Kesar Dass (deceased) represented by his L.Rs and another Vs. Bachittar Singh and others 1981 PLJ 50***. It was , therefore, claimed that plaint be returned for presentation in the Court of competent jurisdiction.

The learned lower appellate Court noticed that the possession of defendant respondents was proved as that of tenant. The learned

lower appellate Court also came to the conclusion that when a finding is recorded that defendants were tenant then the jurisdiction of the Civil Court stood barred under Section 77 of the Punjab Tenancy Act. Therefore, the learned lower appellate Court reversed the finding of the learned trial Court on issue No.2 and, therefore, ordered the return of the plaint for presentation in the Court of competent jurisdiction. The basis for coming to this conclusion was the documentary evidence produced on record showing payment of Batai to the plaintiff respondent. The Court also recorded a finding that the plaintiff had failed to prove on record as to when he came in possession of the property from the previous tenant. The finding recorded by the learned lower appellate Court, therefore, is based on appreciation of evidence. Once it is proved on record that defendants were tenant under the plaintiff the remedy of the plaintiff was only before the Revenue Court and not the Civil Court and, therefore, the learned lower appellate Court rightly reversed the finding on Issue No.2 and ordered the return of the plaint to the plaintiff appellant.

There is no error in the order passed by the learned lower appellate Court which may call for interference by this Court in the appeal.

Dismissed.

01.11.2007
'sp'

(VINOD K. SHARMA)
JUDGE